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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 260

RALPH ELLIOTT SPRINKLE,

Petitioner,

vs.

MOSE E. DAVIS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

M. F. TRADER,
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STATUTE CITED.

Code of Virginia, Sec. 2154 (126) (d) 12

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ralph Elliott Sprinkle, a resident of the city of New York, in the State of New York, respectfully shows that he is aggrieved by a final judgment of the Honorable United States Circuit Court of Appeals for the Fourth Circuit, entered February 17, 1941.

Petitioner deems it proper to state that this case has been tried three times in the District Court of the United States for the Western District of Virginia, and that twice the judgment of said United States District Court has been reversed upon grounds which are set forth in copies of the

opinions of said United States Circuit Court of Appeals, filed herewith, and which will be considered in petitioner's supporting brief herewith filed. *Sprinkle* v. *Davis*, 104 F. (2d) 487; *Sprinkle* v. *Davis*, 111 F. (2d) 925.

But petitioner asks leave to aver with emphasis that *the evidence at the third trial of this case was distinctly different from the evidence offered at either of the two preceding trials, and so different as to present an entirely new case upon the facts.*

And petitioner deems it proper at the outset, with entire deference for the United States Circuit Court for the Fourth Circuit, to state that, notwithstanding this case has been before said United States Circuit Court of Appeals three times, *no opinion has ever been written by said Court* discussing the evidence or the applicable decisions of the Supreme Court of Appeals of the State of Virginia bearing upon the evidence. On this account petitioner respectfully submits that this Honorable Court must look to this petition, and to petitioner's supporting brief, for petitioner's discussion of the evidence and of the special principles of law in force in the State of Virginia applicable to such evidence.

The final judgment of the United States Circuit Court of Appeals for the Fourth Circuit, above referred to, is found in the Record at p. 60, Vol. No. 2.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit, affirming the judgment of the Honorable District Court appealed from is found in the Record at p. 38, Vol. No. 2.

It seems proper that petitioner should point out that the foregoing is the only opinion ever delivered by the Honorable United States Circuit Court of Appeals for the Fourth Circuit. It seems worthy of note, too, that the printed opinion of said United States Circuit Court, which is filed in the Record, shows that this case was argued in said court

on January 6, 1941, and decided by said court, by a *per curiam* decision on January 6, 1941.

The judgment of the District Court of the United States for the Western District of Virginia, which was affirmed by the opinion of the said Circuit Court of Appeals, was entered by said District Court on the 11th day of July, 1940, whereby the verdict of the jury in the sum of $8,500.00, with interest thereon, at the rate of 6% per annum from the 28th day of June, 1940, until paid, together with costs, was affirmed (R. 2, Vol. 1).

Petitioner further shows that by an order signed by the Chief Justice of the United States, dated May 12, 1941 (R. 63, Vol. 2), an extension of sixty days was granted within which to file a petition for certiorari:

I.

Summary and Short Statement of the Matter Involved.

The meat of this case may be presented in the form of a single question:

IS IT POSSIBLE FOR A CAR, WHICH, ON A CLEAR SUMMER AFTERNOON, *IS NOT IN SIGHT 670 FEET AWAY* ON A HIGHWAY OF UNOBSTRUCTED VISIBILITY, TO HIT A PEDESTRIAN WHO SAYS THAT, STANDING ON THE EDGE OF THE MACADAM ROAD, HE FIRST LOOKED CAREFULLY IN THE DIRECTION FROM WHICH THE CAR WAS APPROACHING, THAT HE THEN LOOKED IN THE OTHER DIRECTION, AND SAW NO CAR, THAT HE THEN STARTED ACROSS, AND WAS STRUCK BY THIS CAR UNSEEN AT 670 FEET AWAY BEFORE HE COULD GO STRAIGHT ACROSS A HIGHWAY ONLY 20 FEET WIDE?

There are collateral issues and important sidelights of fact, which will be considered in petitioner's supporting

brief. But the fundamental issue is wrapped in the above question. Petitioner will not vary the facts one iota. Petitioner in his supporting brief quotes literally the very words of the plaintiff in the trial court, and the very words of three other witnesses for plaintiff to like effect. And, further, in his supporting brief, he quotes the very words of plaintiff's two expert witnesses, both certified engineers, from whose testimony the plaintiff's account of the accident is shown to be incredible and impossible.

On July 2, 1937, at about four o'clock in the afternoon, Mose E. Davis, a laborer in a force of about twenty-four men, who had been working on the shoulders of a public highway, cleaning up vegetation and so forth a few miles west of the city of Lynchburg, Virginia, was struck by a car driven from Lynchburg in a westerly direction by Ralph E. Sprinkle, the defendant, now petitioner, who was on his way to meet an engagement for dinner with some friends whose residence was a few miles west of the scene of the accident.

Davis, along with his fellow-laborers, had quit work a few hundred yards east of the place of the accident. They loaded their tools in two trucks and proceeded in these trucks westerly several hundred yards to the Candler residence, which is on the southern side of the highway, where some more tools were to be loaded on the trucks.

The trucks, according to plaintiff's evidence, were both parked on the northern shoulder of the highway, entirely off the hard surface, and with a space of from 6 to 10 feet between them, according to the testimony of plaintiff's witnesses (Milton, R. 60, Vol. 1 and Dillon, R. 76, Vol. 1). Davis rode in the rear truck. He testified that he had left his lunch bucket across the highway opposite the rear end of the parked truck in which he had been riding, that he got out of the truck by stepping on a wheel on its north side, that is, away from the traveled portion of the high-

way; that he walked around the rear of this truck, intending to cross the highway in order to get his lunch bucket, that as he stood on the edge of the macadam, or hard surface, he looked carefully easterly, in the direction from which Sprinkle's car was coming, that no car was in sight, that he then looked westerly and saw no car, whereupon he started to walk straight across the 20-foot road, and that when he had reached a point about a step or a half step from the southern edge of this macadam road, he was struck by Sprinkle's car.

Three witnesses testified to like effect, namely, that they looked down this road easterly just as Davis was about to cross, and that no car was in sight. One of these witnesses, Shelton, looked from the road elevation, but two others, Edward Carter and Thomas Carter, brothers, who were riding in this same truck with Davis, were still in the truck when Davis started across, looked easterly from the elevation of the truck body, which, as has been noted, was parked entirely on the northern shoulder of the highway. Hence, the Carter brothers, it is contended, would have a considerably longer range of visibility than either Davis or Shelton had, seeing that the Carter brothers were looking easterly from the northern shoulder of the road, toward a curve to the south, on which account the position and the elevation of the truck would afford them substantially longer range of visibility.

But both of the Carter brothers say no car was in sight as Davis started across this 20-foot road.

The plaintiff, Davis, called as witnesses two certified civil engineers, Malcolm and Overstreet, who testified that they had tested the range of visibility, of sight clearance, as they termed it, looking easterly from the point where Davis claims to have started across, and that this distance of sight clearance was 670 feet.

Petitioner further, in his supporting brief, quotes the testimony of two of plaintiff's witnesses, one, Milton, who says that the skid marks made by Sprinkle's car when the brakes were applied, started opposite a little hickory tree and continued westerly in Sprinkle's right lane for from 50 to 60 feet before they, the skid marks, crossed the center line of the highway; and Overstreet, the other witness, a civil engineer, says that this little hickory tree is 39 feet east of the rear end of the truck, the point where Davis entered the highway.

The significance of this testimony of Milton and Overstreet, both witnesses for plaintiff, is that Davis entered the highway at a point from 10 to 20 feet *east* of the point where Sprinkle's car crossed the center line of the highway, that therefore Sprinkle's car was in its right lane when Davis started across, and that, *therefore, Davis had to walk, not 20 feet, but only 10 feet of this 20-foot road, in order to get out of the path of a car not in sight at 670 feet easterly when Davis started across.*

> THEREFORE, THE PLAINTIFF'S OWN EVIDENCE PRESENTS THIS SINGLE QUESTION: IS IT POSSIBLE FOR A CAR NOT IN SIGHT AT 670 FEET TO STRIKE A PEDESTRIAN WHO HAS TO WALK ONLY 10 FEET IN ORDER TO GET OUT OF THE PATH OF THE CAR WHICH MUST TRAVEL MORE THAN 670 FEET IN ORDER TO STRIKE HIM?

Appropriate references to the record are made in the supporting brief to sustain the foregoing recitals.

Petitioner also presents a number of other relevant and convincing facts, the recital of which here would unduly prolong this summary. There are also in the record original exhibits, maps and photographs, which will make realistic the foregoing recitals.

II.

The basis upon which it is contended that this Court has jurisdiction to review the judgment in question.

Reference is here made to the Act of February 13, 1925, Chapter 229, 43 Stat. 936, and in particular to Section 240 (a), of the Judicial Code, as amended, which may be found on page 5 of the Appendix to the Rules of this Honorable Court.

III.

The Questions Presented.

The assignment of numerous errors will be found in the record, particularly under the caption "Statement of Points Upon Which Appellant Will Rely on Appeal" (R. 17, Vol. 1).

The errors thus assigned are believed to be substantial. But all of the errors so assigned, petitioner, upon reflection, believes to be wrapped in the single contention that under his own evidence plaintiff has no case against the defendant below, supplemented by his further contention that plaintiff's evidence not only does not prove his case, but that the testimony of the plaintiff below, and of his chief witnesses, is shown to be false by the contradictions hereinafter pointed out. Therefore, petitioner feels that the following specifications of errors are sufficient:

(a) The error of the Circuit Court of Appeals in affirming the action of the trial court in overruling defendant's motion to strike plaintiff's evidence and to direct a verdict for defendant, which motion was made at the conclusion of plaintiff's case in chief.

(b) The error of the said Circuit Court of Appeals in affirming the action of the trial court in overruling defendant's motion to strike plaintiff's evidence and to direct a verdict for the plaintiff, again made, pursu-

ant to the local state practice, at the conclusion of all of the testimony of both plaintiff and defendant.

(c) The error of the Circuit Court of Appeals in affirming the action of the Trial Court in overruling defendant's motion to set aside the verdict of the jury and to enter judgment for the defendant pursuant to Section 6251 of the Code of Virginia.

(d) The error of the said Circuit Court of Appeals in affirming the judgment of the trial court on the ground that the jury's verdict in favor of plaintiff could not be disturbed.

The development of the basic errors thus assigned will be found in Section III and Section V of the supporting brief.

IV.

The Reasons Relied On for the Allowance of the Writ.

(a) Petitioner respectfully submits that the judgment of the aforesaid District Court and the judgment of the aforesaid United States Circuit Court of Appeals are so clearly against the evidence, even the plaintiff's own evidence, as to render mandatory the exercise of this Court's superior jurisdiction in order to prevent manifest injustice.

(b) The Circuit Court of Appeals has decided an important question of local law in a way which is directly in conflict with the applicable decisions of the Supreme Court of Appeals of Virginia.

(c) The Circuit Court of Appeals has in effect, though not in intent, so far departed from the accepted and usual course of judicial proceedings as to call for an extension of this Court's power of supervision.

The reasons assigned under this caption will be elaborated in petitioner's supporting brief.

WHEREFORE, petitioner prays that a writ of certiorari may issue under the seal of this Honorable Court in this cause, directed to the Honorable United States Circuit Court of Appeals for the Fourth Circuit, commanding said court to certify and transmit to this Honorable Court, in manner and form as provided by law, a complete transcript of the record and all proceedings had in said Circuit Court of Appeals in this cause, to the end that this cause may be reviewed and determined by this Honorable Court, and that petitioner may be granted such other and further relief as his case may entitle him to, or as to equity shall seem meet.

And petitioner will ever pray.

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